

1 KAREN P. HEWITT
United States Attorney
2 MEGAN CALLAN
Assistant U.S. Attorney
3 California State Bar No. 230329
880 Front St., Room 6293
4 San Diego, CA 92101-8893
Telephone: 619-557-7120
5 Facsimile: 619-557-5004
Megan.Callan@usdoj.gov

6 Attorneys for Defendant
7

8 MARGARITA RODRIGUEZ and)
MARIA WHITE,)

9)
10 Plaintiffs,)

11 v.)

12 UNITED STATES OF AMERICA and)
DOES 1 through 20, Inclusive,)

13 Defendants.)
14)
15

Case No. 08cv1116-WQH (LSP)

ANSWER BY UNITED STATES OF AMERICA

16 **COMES NOW Defendant United States of America**, through its attorneys Karen P. Hewitt,
17 United States Attorney, and Megan Callan, Assistant U.S. Attorney, and answers the numbered
18 paragraphs of Plaintiffs' Complaint as follows:

19 1. Answering Paragraph 1 of the Complaint, Defendant United States of America states that the
20 allegations constitute conclusions of law solely for the Court's determination, to which no answer is
21 required; to the extent they may be deemed conclusions of fact, they are denied.

22 2. Answering Paragraph 2 of the Complaint, with respect to the first and second sentences,
23 Defendant United States of America denies the allegations therein. With respect to the third sentence
24 of Paragraph 2, Defendant United States of America states that a June 22, 2004 claim from State Farm
25 Insurance Company, as subrogee of Margarita Rodriguez, was approved. Answering further, a
26 November 15, 2004 claim from Margarita Rodriguez was denied on February 24, 2005. Answering
27 further, a November 1, 2007 claim from Margarita Rodriguez was denied on May 15, 2008. Answering
28 further, Maria White presented no administrative claim regarding this incident prior to November 1,

1 2007. Answering further, a November 1, 2007 claim from Maria White was denied on or about May 15,
2 2008. With respect to the final sentence, these allegations contained conclusions of law solely for the
3 Court's determination, to which no answer is required; to the extent they may be deemed conclusions
4 of fact, they are denied.

5 3. Answering Paragraph 3 of the Complaint, Defendant United States of America states that the
6 allegations therein constitute conclusions of law solely for the Court's determination, to which no
7 answer is required; to the extent they may be deemed conclusions of fact, they are denied.

8 4. Answering Paragraph 4 of the Complaint, Defendant United States of America denies the
9 allegations contained in Paragraph 4 of the Complaint. Answering further, Defendant states that the use
10 of Doe Defendants is disfavored in federal courts and that the Federal Rules of Civil Procedure provide
11 for pleading amendment rather than the use of Doe Defendants.

12 5. Answering Paragraph 5 of the Complaint, Defendant United States of America admits the
13 allegations therein as worded. Answering further, Defendant United States of America states that
14 Thomas Portz is no longer a federal employee.

15 6. Answering Paragraph 6 of the Complaint, Defendant United States of America denies the
16 allegations therein with the exception that Defendant admits that on May 13, 2004 both Plaintiff
17 Margarita Rodriguez and Plaintiff Maria White collided with the security bollards at the entrance to
18 Naval Medical Center San Diego at different times.

19 7. Answering Paragraph 7 of the Complaint, with respect to the first sentence, Defendant United
20 States of America denies that Plaintiff Maria White filed a timely administrative claim. Answering
21 further, Defendant states that the untimely administrative claim of Maria White was denied on May 15,
22 2008, although the denial letter was erroneously dated May 15, 2007. Answering further, Defendant
23 admits that Plaintiff Margarita Rodriguez presented a timely administrative claim which was denied by
24 Thomas Portz by letter dated February 24, 2005. In all other respects, the allegations of the first
25 sentence are denied. With respect to the remainder of Paragraph 7, Defendant admits that Thomas
26 Portz's February 24, 2005 contained the portions quoted in Plaintiffs' Complaint. In all other respects,
27 the allegations of the remainder are denied.

28 //

1 8. Answering Paragraph 8 of the Complaint, Defendant United States of America lacks
2 sufficient information or belief upon which to admit or deny the allegations therein, and on that basis
3 denies the allegations.

4 9. Answering Paragraph 9 of the Complaint, Defendant United States of America lacks
5 sufficient information or belief upon which to admit or deny the allegations therein, and on that basis
6 denies the allegations.

7 10. Answering Paragraph 10 of the Complaint, Defendant United States of America denies the
8 allegations therein.

9 11. Answering Paragraph 11 of the Complaint, Defendant United States of America denies the
10 allegations therein.

11 12. Answering Paragraph 12 of the Complaint, Defendant United States of America denies the
12 allegations therein.

13 13. Answering Paragraph 13 of the Complaint, Defendant United States of America states that
14 no answer is required because the paragraph is simply an incorporation by reference; to the extent an
15 answer is required, the allegations are denied.

16 14. Answering Paragraph 14 of the Complaint, Defendant United States of America denies the
17 allegations therein.

18 15. Answering Paragraph 15 of the Complaint, Defendant United States of America denies the
19 allegations therein.

20 16. Answering Paragraph 16 of the Complaint, Defendant United States of America denies the
21 allegations therein.

22 17. Answering Paragraph 17 of the Complaint, Defendant United States of America denies the
23 allegations therein.

24 No answer is required to Plaintiffs' Prayer for Relief. To the extent any answer is required,
25 Defendant United States of America denies the allegations therein.

26 AFFIRMATIVE OR OTHER DEFENSES

27 All allegations not here before specifically admitted, denied, or modified, are hereby denied.
28 For further and separate answer, Defendant United States of America alleges as follows:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FIRST DEFENSE

The Court lacks jurisdiction over the subject matter of this action.

SECOND DEFENSE

The Complaint fails to state a claim against Defendant United States of America upon which relief can be granted.

THIRD DEFENSE

Plaintiffs have named improper parties as defendants in a Federal Tort Claims Act case.

FOURTH DEFENSE

Plaintiffs failed to timely or properly exhaust administrative remedies.

FIFTH DEFENSE

Any injury or injuries sustained by Plaintiffs were caused in whole or in part by and through the carelessness and negligence of Plaintiffs.

SIXTH DEFENSE

The acts and omissions of others, which were the sole proximate causes of any injury, damage or loss to Plaintiffs, superseded any act or omissions of Defendant United States of America.

SEVENTH DEFENSE

The acts and omissions of others were intervening, independent and proximate causes of the alleged injuries.

EIGHTH DEFENSE

Any injury sustained by Plaintiffs was not caused by carelessness or negligence on the part of Defendant United States of America, its agents, servants or employees but was caused solely by and through the negligence of Plaintiffs.

NINTH DEFENSE

A negligent or wrongful act or omission on the part of an employee or agent of the United States did not proximately cause the injuries and damages alleged by Plaintiffs.

//
//
//

1 TENTH DEFENSE

2 The liability of the United States and responsible parties, named or unnamed, if any, should be
3 apportioned according to their respective degrees of fault, and the liability of these defendants, if any
4 should be reduced accordingly.

5 ELEVENTH DEFENSE

6 Plaintiffs' claims are barred or diminished as a result of their failure to exercise reasonable case
7 in mitigating their damages.

8 TWELFTH DEFENSE

9 The Complaint, and each and every count contained therein, is barred based on laches.

10 THIRTEENTH DEFENSE

11 Plaintiffs' recovery, if any, is limited to the amount of the claim that Plaintiffs presented
12 administratively in 2004. 28 U.S.C. § 2675(b).

13 FOURTEENTH DEFENSE

14 All future damages, if any, must be reduced to present value.

15 FIFTEENTH DEFENSE

16 Income taxes must be deducted from all alleged past and future lost earnings, if any.

17 SIXTEENTH DEFENSE

18 In the event Defendant United States of America is found liable, which Defendant expressly
19 denies, Defendant is entitled to an offset against damages, if any, for all amounts received by Plaintiffs
20 from the United States and its agencies, and also from all collateral sources, by reason of Plaintiffs'
21 alleged injuries.

22 SEVENTEENTH DEFENSE

23 Plaintiffs shall not recover non-economic losses to compensate for pain, suffering,
24 inconvenience, physical impairment, disfigurement, or other nonpecuniary damages under certain
25 circumstances, including the failure to insure the vehicle as required by the financial responsibility laws
26 of the State of California. Cal. Civil Code § 3333.4.

27 //

28 //

EIGHTEENTH DEFENSE

Plaintiffs' allegations of deceit or misrepresentation are excluded from the limited waiver of sovereign immunity provided by the Federal Tort Claims Act. 28 U.S.C. § 2680(h).

NINETEENTH DEFENSE

The Federal Tort Claims Act prohibits punitive damages.

WHEREFORE, Defendant prays that Plaintiffs take nothing by reason of their suit herein, that judgment be rendered in favor of Defendant United States of America, for costs of suit herein incurred, and for such other and further relief as this court may deem proper.

Dated: September 8, 2008

Respectfully submitted,
KAREN P. HEWITT
United States Attorney

s/ Megan Callan

MEGAN CALLAN
Assistant U.S. Attorney
Attorneys for Defendant United States of America
Email: Megan.Callan@usdoj.gov

1 KAREN P. HEWITT
United States Attorney
2 MEGAN CALLAN
Assistant U.S. Attorney
3 California State Bar No. 230329
880 Front St., Room 6293
4 San Diego, CA 92101-8893
Telephone: 619-557-7120
5 Facsimile: 619-557-5004
Megan.Callan@usdoj.gov

6 Attorneys for Defendant
7

8 MARGARITA RODRIGUEZ and)
MARIA WHITE,)

9 Plaintiffs,)

10 v.)

11 UNITED STATES OF AMERICA and)
12 DOES 1 through 20, Inclusive,)

13 Defendants.)
14)
15)

Case No. 08cv1116-WQH (LSP)

CERTIFICATE OF SERVICE

16 IT IS HEREBY CERTIFIED THAT:

17 I, the undersigned, am a citizen of the United States and am at least eighteen years of age. My
business address is 880 Front Street, Room 6293, San Diego, California 92101-8893.

18 I am not a party to the above-entitled action. I have caused service of: ANSWER BY UNITED
19 STATES OF AMERICA on the following party by electronically filing the foregoing with the Clerk of
the District Court using its ECF System, which electronically provides notice.

20 James Sexton
21 Attorneys for Plaintiffs
E-Mail: info@jamessextonlaw.com

22 I declare under penalty of perjury that the foregoing is true and correct.

23 Executed on September 8, 2008.

24 s/ Megan Callan
25 Megan Callan
26
27
28